

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2018-05ST
January 3, 2019

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

ISSUES

Sales and Use Tax - Taxability of Tangible Personal Property Used in a Service Taxable in Another Jurisdiction

Authority: [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); *Greensburg Motel Associates, LP v. Dept. of State Revenue*, 629 N.E.2d 1302 (Ind. Tax 1994); Sales Tax Information Bulletin #26 (December 2002).

A taxpayer ("Company") is seeking an opinion as to whether tangible personal property used or consumed in a dry-cleaning process can be purchased exempt from Indiana sales and use tax because Kentucky charges sales tax on dry cleaning services.

STATEMENT OF FACTS

Company is an Indiana corporation that operates a chain of dry-cleaning retail locations in both Indiana and Kentucky. Company provides the following information regarding its request:

On a daily basis, Company delivery trucks pick up laundry from the retail locations and bring them to the plant (located in Indiana) to be laundered and packaged. The garments are then returned to the retail location where they are picked up by the customer. In accordance with [Sales Tax Information Bulletin #26], sales/use tax is paid on all purchases of tangible personal property used in the dry-cleaning process. This includes detergents, cleaning fluids, equipment, utilities, and all wrapping materials such as garment bags and hangers.

Until recently, retail dry-cleaning services have been exempt from sales tax in Indiana and Kentucky. As of July 1, 2018, retail dry-cleaning services are subject to Kentucky sales tax.

It seems reasonable that the tangible personal property mentioned above can now be purchased exempt from Indiana sales and use tax, to the extent it is used in laundering garments that will be returned to Kentucky for delivery, since Kentucky customers are now subject to a retail sales tax. If not, it appears the tax would be paid twice.

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The Company also has the ability to track what garments are returned to their retail stores in Kentucky.

DISCUSSION

Based on the foregoing facts, Company requests a ruling as to whether it should be able to buy tangible personal property exempt from sales tax when the tangible personal property will be used for dry-cleaning services for Kentucky customers, as Kentucky charges sales tax on dry cleaning services. Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), sales tax is imposed on retail transactions made in Indiana. A retail transaction is defined in [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration.

There are several enumerated exemptions from sales and use tax found in Article 2.5 of Title 6 of the Indiana Code. However, absent a statutory exemption, the tangible personal property sold in a retail transaction is subject to sales tax per [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#).

"Tangible personal property" is defined in [IC 6-2.5-1-27](#) as:

- . . . personal property that:
(1) can be seen, weighed, measured, felt, or touched; or

(2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to Indiana sales or use tax. Sales Tax Information Bulletin #26 (December 2002) contains the Department's policy regarding dry cleaning services, providing that the services performed by dry cleaning establishments is generally not subject to the Indiana sales tax. Regarding purchases made by a dry cleaning establishment, the Department's policy in the bulletin is as follows:

All purchases by laundries and dry cleaning establishments of tangible personal property used in the operation of such businesses are subject to the sales tax, including the purchase of:

1. Detergents;
2. Cleaning fluids;
3. Machinery and equipment;
4. Utilities consumed in the operation of the business, and
5. All wrapping materials, including garment bags and hangers.

The above rules apply uniformly to coin operated dry cleaning, conventional dry cleaning, industrial dry cleaning, and the laundry businesses.

There is no statutory exemption for the purchase of tangible personal property used in a dry cleaning service, and as explained in Sales Tax Information Bulletin #26, the Department views that the purchase of tangible personal property used in a dry cleaning service is subject to Indiana sales and use tax. Further, there is no general exemption for tangible personal property that will be used or consumed in the execution of a taxable service. Therefore, the Department cannot agree that Company's purchase of tangible personal property should be exempt even though some of the property will be used or consumed in services for their Kentucky customers, which will then be subject to Kentucky sales tax.

Further, this is not a case of double taxation: while Indiana requires a tax to be paid by the retail merchant on the tangible personal property, Kentucky requires a tax to be paid by the *customer* on the service which consumes that property. This happens in various industries, even where the tangible personal property was purchased by a retail merchant and taxed in Indiana and the service occurs and is taxed in Indiana. The Indiana Tax Court addressed this issue in *Greensburg Motel Associates, LP v. Dept. of State Revenue*, 629 N.E.2d 1302 (Ind. Tax 1994). In that case, the taxpayer was a motel owner and operator who argued that tax pyramiding occurs in its industry because they provided a taxable service and were not exempt from sales tax on their purchases of consumable items, non-consumable items, and utilities. The Court stated, "[n]ot every purchase incorporated into service is exempt from sales tax." As such, there is no statutory reason to exempt sales tax collected on tangible personal property in Indiana just because Kentucky charges sales tax on the service, which used or consumed that property in fulfilling that service.

RULING

Based on the information provided, Company's purchase of tangible personal property used in a dry cleaning service is subject to Indiana sales and use tax, even if it will be used or consumed in performing a service that is subject to Kentucky sales tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Posted: 03/27/2019 by Legislative Services Agency

